

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 718 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE M.C.PATEL

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JAISUKHGIRI KARSANGIRI GOSAI MEGHNATHI

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for appellannt.

MR S T MEHTA for Respondent-State.

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE M.C.PATEL

Date of decision: 29/01/98

ORAL JUDGEMENT(Per Soni,J.)

The appellant- original accused in Sessions Case no.27/89 is held guilty under Section 302 of the Indian Penal Code and awarded R.I. for life by Additional Sessions Judge, Junagadh by his judgment and order dated 20th September, 1989. This appeal is directed against

the said judgment and order.

Facts leading to the prosecution of the appellant accused are as under:

Deceased Dharamshibhai Kanjibhai was an ordinary resident of village Gadu, District Junagadh. He has 60 to 65 Vighas of agricultural land in Gadu, however, since years he is settled in Veeraval. Deceased had dispute about the said land in Gadu with one Karshangiri-father of accused. This dispute of land created an enmity. In the morning of 25th January, 1989 said Dharamshibhai had gone to village Gadu from Veeraval via Chorvad. When he was passing in front of Gayatri Pan Centre near Ranji Mandir in the evening, accused came from behind and accosted him saying " Rokadia wait." The said Dahramshibhai stopped and the accused gave one blow of dharia which landed on the head of Dharamshibhai and he (accused) also inflicted other blows of dharia. Dharamshibhai fell down and shouted. Persons gathered there. One Lalitkumar Keshavji who had seen the incident went to inform his brother Prabhudasbhai who met him on the road. Then they took him in a taxi to Veeraval Hospital. On the way, son of Dharamshibhai met them near village Supasi and he accompanied his father to Government Municipal Hospital. They reached the hospital by about 6.30 p.m. where Dharamshibhai died at 6.50 p.m. Dr. Phulbaria who treated the deceased informed Veeraval City Police to the effect that one Dharamshibhai Kanjibhai who was injured in an accident on Gadu roadside and brought for treatment in unconscious condition has died. Thereafter, Constable B.M. Moda also informed Veeraval City Police Station to the effect that on reaching hospital brother and sons of deceased has informed that the incident is of scuffle and blows are of axe. It being a murder case Police Sub Inspector may be sent immediately. It appears that Police Sub Inspector-J.S. Makwana reached the hospital. On reaching the hospital he recorded the complaint of Rajnikant son of deceased and sent it to Veeraval Police Station by zero number. It was then sent to Chorvad and offence was registered. On offence being registered necessary investigation was carried out and on completion of the same chargesheet was submitted before the Judicial Magistrate, First Class, Malia, who in his turn committed the case to the Court of Sessions at Junagadh.

Learned Additional Sessions Judge, Junagadh framed charge against the accused under Section 302 of the Indian Penal Code. The accused pleaded not guilty and prayed to be tried. Prosecution lead necessary

evidence to prove the charge against the accused. On evidence of the prosecution being over, further statement of the accused was recorded. It appears from the nature of cross-examination of the prosecution witnesses and the further statement of the accused that the defence of the accused is of total denial and he is roped in falsely by the deceased and his son and relatives because of his enmity with the deceased on the question of dispute of land. The defence has not led any evidence. The learned Additional Sessions Judge after hearing the learned Public Prosecutor and the Advocate for the defence found the charge against the accused proved and held him guilty and awarded the sentence referred hereinabove. This judgment and order is under challenge in this appeal.

The learned Sr. Advocate Mr. P.M. Thakkar has challenged the conviction on the ground that the eye witnesses are all got up and cannot be believed. Mr. Thakkar further contended that the prosecution has come out with three versions as to assailants in evidence, namely, (1) that there were more than one person and sons of Karsangiri (2) present accused was the only person and (3) there were more than one person with son of Karsangiri. Mr. Thakkar wanted to convey by this submission that it is not known to the prosecution witness as to who are the real assailants. He, therefore, contended that the benefit of doubt should have been given to the accused. Mr. Thakkar further contended that accused is in jail since 25th January, 1989 and more than 10 years have passed, assuming credit of two years given to all the accused in this Golden Jubilee Year of Independence., Mr. Thakkar contended that by this passage of time, the purpose of punishment should be assumed to have been achieved. Mr. Thakkar therefore contended that appeal should be allowed and accused be acquitted.

Mr. S.T. Mehta, learned A.P.P. appearing for the State has contended that the person who has lodged the First Information report is not an eye witness. Therefore, any statement in the First Information Report is only a hear say and not admissible unless proved in accordance with law. Hence, no much value be attached to it. Mr. Mehta further contended that the alleged dying declaration of the deceased before his son is not an acceptable one in view of the variance in the First Information Report and the substantive evidence before the Court. These facts however do not damage the prosecution case. Mr. Mehta contended that there is no reason whatsoever not to accept the evidence of three eye witnesses whose evidence is cogent and convincing. They

have referred in their evidence the accused as an assailant and none else. They have not referred any other person other than the accused as assailant. Mr. Mehta further contended that the convict will be entitled to remission of two years as granted because of Golden Jubilee Year of Independence only at the time when he completes the sentence. Remission will be given at the end of the sentence. Mr. Mehta therefore contended that the appeal deserves to be dismissed.

It is undisputed that Rajnikant PW.2 who lodged First Information Report is not an eye witness. It is his say that when he met his father who was brought from Gadu to be taken to the hospital near village Supasi, he joined his father in taxi and his father on inquiry by him (PW 2) told him (PW 2) that he is injured by sons of Bhavaji and others. In his substantive evidence he has stated that his father told him that son of Bhavaji has assaulted him. In the said taxi Mohanlal Lalaji and Ratilal Meghji were also present. They are not examined. Therefore, this part of the evidence of PW.2 is uncorroborated. It is not known as to the mental condition of the victim who had as many as 12 internal injuries and 4 external injuries as stated by the Doctor. One of the eye witnesses named Lalitkumar Keshavji has informed his brother Prabhudas who told him to go and hire taxi and the said Prabhudas had not accompanied Dharamshi and had travelled separately on a motorcycle. There is nothing on record to show that there is any conversation between Prabhudas and Rajnikant before first information was registered. Thus, in our opinion, say of Rajnikant PW.2 cannot be relied upon.

What is then left is the evidence of three eye witnesses Panchabhai Kanabhai PW 3, Lalitkumar Keshavji PW 5, Lalitkumar Jamnadas PW 6. As per the map Exh.10, shop of Panchabhai Kanabhai is on the West, shop of Lalitkumar Keshavji (Gayatri Pan Centre) is on the South and shop of Lalitkumar Jamnadas is on the West. Panchabhai PW 3 in his evidence has stated that while he was preparing tea in his teashop he heard commotion and when he came out he saw one old man lying on the floor. Accused Jaysukh was present there and he gave last blow with dharia to the deceased. The accused then ran away with the dharia. Lalitbhai and others had gathered there. In cross examination he has stated that said Dharamsibhai had fallen at a distance of 20 ft. from his shop. He has denied that his shop was closed on that day. He has admitted that he cannot say how many blows and by whom the blows were given before the last blow. In cross examination he has further admitted that he has

not seen how many blows were given, however, he had seen one blow being given and that blow had landed on the throat of the person. This part of the evidence is corroborated by the evidence of the Doctor who has performed the post mortem examination. External injury no.6 is an incise wound 2 x 1/4" x 1 1/4" on the front of the throat more on the right side of the throat and transverse in direction. There is nothing in the cross-examination of this Panchabhai PW 3 to reject his evidence. PW 3 is further corroborated by evidence of Lalitkumar Keshavji having Pan shop known as "Gayatri Pan Ghar". PW 5 has deposed to the effect that he saw deceased Dharamshibhai coming from Ramji Mandir side.....He was at a distance of about 15 to 20 ft. from his shop. Then Jaysukhgiri came from behind who is an accused before the Court.....He said, "Rokadia wait" Dharamshibhai, therefore, stopped. Accused Jaysukhgiri then gave dharia blow on the head of Dharamshibhai from behind. The said blow was given on the right side. Dharamshibhai shouted, " Save, save". When another blow was given by accused to Dharamshibhai, Dharmashibhai fell down.....Thereafter accused gave 4 to 5 dharia blows to Dharamshibhai. Jaysukhgiri then escaped towards Ramji Mandir. He then went to inform his elder brother Prabhudasbhai who came and asked him to hire taxi which he hired and the injured was taken to Veeraval. In cross-examination an attempt is made to show that he has not seen the commission of incident but nothing important could be extracted from his cross-examination which would entitle the Court to reject his evidence. If evidence of PW 3 and PW 5 is read together it is cogent, convincing and corroborating each other. Incident has taken place in between the shops of these witnesses. There is third eye witness Lalitkumar Jamnadas PW 6. According to him, he had been to the shop of PW 3 for taking tea where he heard commotion and he and PW 3 came out of the shop. He saw Dharamshibhai who had fallen near the pan shop and one person was going away after assaulting him. He has not properly identified. However, he identified the accused in the Court and said that he had seen him and stated that he(accused) had run towards Ramji Mandir side. On permission being granted to Public Prosecutor to allow to put questions in the nature of cross-examination without declaring him hostile, he has admitted that he has given the name of accused Jaysukhbhai in his police statement. In cross examination he has admitted that on hearing the commotion he and Panchabhai both came out. He denied that he does not know who has assaulted Dharamshibhai. This witness also corroborates the say of PW 3 and PW 5. Thus, from the evidence of PW 3, PW 5 and PW 6

prosecution has been able to establish that Dharamshibhai was assaulted by Jaysukhgiri alone. The evidence of PW 3 and PW 5 is further corroborated by the medical evidence. Thus from the evidence of this witness, it is clear that there is no substance in the contention raised by Mr. Thakkar that there are three versions as to who are the assailants. The assailant is only the accused and other versions are based on hearsay evidence and the same is not acceptable.

The accused himself has discovered dharia vide Panchnama Exh.31. The said dharia is found stained with human blood of the group of the deceased for which accused has not given any explanation. The entries in station diary are based on the statements of the witnesses who are not eye witnesses and therefore their evidence do not damage the prosecution case. From the evidence of Dr. Bhimjibhai Phulbaria, PW 1, it is proved on the basis of PM note that the deceased had following external and internal injuries:

External injuries

1. An incise wound on the left fronto temporal region 5" x 1 1/2" x bone deep, starting from hairline and ending behind the left ear, about 2" above the left ear. Left temporal bone is fractured. Clotted blood present.
2. An incised wound on the left occipital region 3 1/2" x 1/4" x skull bone deep underlying left occipital bone is fractured. The wound is side to side in direction. Clotted blood present.
3. An incise wound on the Rt. parietal 2" x 1/4" x scalp deep. Anterior posterior in direction. Clotted blood present.
4. An incised wound on the right cheek on axillary part 1" x 1/4" x muscle deep, verticle in direction. Clotted blood present.
5. An incise wound on the Rt. side of the chin 1 1/2" x 1/2" x bone deep with the fracture of the mandible under the wound 1 1/2" long abrasion both inj. no.4 and 5.
6. An incise wound 2"x 1/4" x 1/4" on the front of the throat more on the Rt.side of the throat. Wound is transverse in direction. Clotted blood present.

7. An abrasion over the Rt.side of the throat and neck 6" x 1/10" x superficial skin deep, starting from the mid line of the throat and ending on the Rt.side of the neck. Clotted blood present.
8. An abrasion over the front of the chest 12" x 1/4" x superficial, starting from the Rt. upper chest to the left mid clavicular chest below the left nipple with clotted blood.
9. An abrasion over the Rt.shoulder 1/2" x 1/4" with clotted blood.
10. An incise wound on the left index finger distal phalanx 1/2" x 1/2" x cutting of distal phalangeal bone, cut part is hanging with a tag of the palmer skin with clotted blood.
11. An abrasion over the left wrist dorsal aspect 2" x 1/4" x superficial skin deep with clotted blood.
12. An abrasion over the back of the chest in interscapular region 8" x 1/10" x superficial skin deep, oblique in direction with clotted blood.

Internal injuries

Head -

(i) Injuries under the scalp, their nature. (1) Fracture of the

left temporal bone(bone is cut 3 1/2" long, lower part is depressed and upper part is overlapping on the lower part. Ant.posterior in direction. Clotted blood present.

(2) Fracture of the

left occipital bone(bone is cut 3 1/2" long, lower part is depressed and

upper part is overlapping on the lower part, side to side in direction. Clotted blood present.

(ii) Skull - Vault and base describe fractures, their sites, dimensions directions, etc.

(1) Fracture of the left temporal

bone 3 1/2" long anter. posterior in direction.

(2) Fracture of the left occipital bone 3 1/2" long side to side in direction.

(ii) Brain - the appearance of its coverings size, weight and general condition of the organ itself and any abnormality found in its examination to be carefully noted.

(weight M. 3lbs.)

F. 2.75 lbs.

(1) Coverings are

ruptured on the left temporal and on the left occipital regions, bloodstained due to ruptures of meningeal vessels at the sites of the injuries, (3 1/2"; & 3 1/2" each)

(2) Lacerations of

the brain tissues
on the left
temporal lobe and
the left
occipital lobe 3"
and 2"
respectively.

(3) Dark fluid blood

present in
cranial cavity on
the left
side.

(4) Brain tissue on

the left side is
blood stained.

(5) Wt.1250 gms.

Thorax -

(a) Walls, ribs, cartilages Subcutaneous tissues are

bloodstained under the
injury on the chest,
starting from the
Rt. upper chest to left
mid chest below the left
nipple about 12" x 1 1/4".
No fracture of ribs
found.

Dr. PW.1 has deposed to the effect that internal injuries no.1, 2, 3 and 4 are corresponding to external injuries no. 1, 2, 3 and 4. He has also stated that the said injuries are possible by weapon like dharia. The said injuries are sufficient in the ordinary course of nature to cause death. He has denied that if the injured would have got immediate treatment he could have been saved. Thus, from the evidence of the Doctor, it is clear that the deceased had died a homicidal death. In view of the above discussion, it is clear that deceased had died a homicidal death and the injuries are caused by the accused.

We are not impressed with the contention of Mr. Thakkar that no useful purpose will be served by confirming the conviction as accused has already undergone 10 years sentence. Purpose of punishment be either reformative, exemplary or attributive stands served by undergoing the sentence of 10 years. Simply because the period of sentence has rolled by cannot

entitle the accused to be acquitted. Here is a case where the prosecution has proved beyond reasonable doubt that it is the accused who has caused murder of the deceased.

In view of the above discussion, appeal is liable to be dismissed and is hereby dismissed.
